No. 06-1595

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SUPREME COURT, U.S.

In The

Supreme Court of the United States

VICKY S. CRAWFORD,

Petitioner,

v.

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

In order to come under the scope of the "opposition clause" in a Title VII retaliation claim, does a plaintiff have to actively "oppose" what she perceives to be an unlawful employment practice? The answer is an unqualified "yes."

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	3
REASONS FOR DENYING REVIEW	5
I. THE COURT SHOULD DECLINE TO DEFER TO THE EEOC'S POLICY PRONOUNCEMENTS AND ADJUDICATORY POSITIONS	5
II. THERE IS NO CONFLICT BETWEEN THE CIRCUITS	7
III. THE "FOREBODING SCENARIO" MS. CRAWFORD PREDICTS IS UNLIKELY TO OCCUR	15
CONCLUSION	17

TABLE OF AUTHORITIES

Page

CASES

Abbott v. Crown Motor Co., Inc., 348 F.3d 537 (6th Cir. 2003) 6, 7, 16

Booker v. Brown and Williamson Tobacco Co., Inc., 879 F.2d 1304 (6th Cir. 1989) 8, 10

Brower v. Runyon, 178 F.3d 1002 (8th Cir. 1999) 6, 7, 16

Cardenas v. Massey, 269 F.3d 251 (3rd Cir. 2001) 10, 11

Curay-Cramer v. Ursuline Academy of Wilmington, Delaware, Inc., 450 F.3d 130 (3rd Cir. 2006) 8, 10

EEOC v. Dinuba Medical Clinic, 222 F.3d 580 (9th Cir. 2000) 9

EEOC v. Total System Services, Inc., 221 F.3d 1171 (11th Cir. 2000) 3, 6, 7, 12, 16

EEOC v. Total System Services, Inc., 240 F.3d 899 (11th Cir. 2001) 3, 13, 15

Evans v. City of Houston, 246 F.3d 344 (5th Cir. 2001) 11

Faragher v. City of Boca Raton, 524 U.S. 775 (1998) 14, 15, 16

Hoffman v. Rubin, 193 F.3d 959 (8th Cir. 1999) 12

Ledbetter v. Goodyear Tire and Rubber, Co., Inc., 127 S.Ct. 2162 (2007) 3, 5

Little v. Windermere Relocation, Inc., 301 F.3d 958 (9th Cir. 2002) (*en banc*) 9

McDonnell v. Cisneros, 84 F.3d 256 (7th Cir. 1996) 13

TABLE OF AUTHORITIES – Continued

Page

Moore v. City of Philadelphia, 461 F.3d 331 (3rd Cir. 2006) 9

National Railroad Passenger Corp. v. Morgan, 536 U.S. 101 (2002) 5

Reno v. Bossier Parish School Bd., 528 U.S. 320 (2000) 5

Scott v. County of Ramsey, 180 F.3d 913 (8th Cir. 1999) 11, 12

Trent v. Valley Electric Assoc. Inc., 41 F.3d 524 (9th Cir. 1994) 9

Valentin-Almeyda v. Municipality of Aguadilla, 447 F.3d 85 (1st Cir. 2006) 9

Vasconcelos v. Meese, 907 F.2d 111 (9th Cir. 1990) 6, 7, 16

Worth v. Tyer, 276 F.3d 249 (7th Cir. 2001) 9

STATUTES

42 U.S.C. § 2000e-3(a) 5

STATEMENT OF THE CASE

Respondent, the Metropolitan Government of Nashville and Davidson County, Tennessee ("Metropolitan Government") adopts and incorporates by reference the Sixth Circuit's recitation of the facts. (Crawford App. 4a-6a).[1] Additional salient facts are as follows.

Ms. Crawford was interviewed by the Metropolitan Government's Human Resources Department in-house sexual harassment investigators on July 22, 2002, in connection with a sexual harassment complaint made by someone else. App. 5-6. Prior to that meeting with investigators, Ms. Crawford did not even know that a sexual harassment investigation was underway. App. 6. She had no idea why she was summoned to Human Resources. *Id.*

The sexual harassment investigation was concluded by September 13, 2002, the date that investigator Veronica Frazier issued her Fact-Finding Report. App. 8.

As a result of information obtained during the course of the sexual harassment investigation, Ms. Frazier sent a September 13, 2002 letter to Kim McDoniel, the head of the Internal Audit Division of the Department of Finance of the Metropolitan Government. App. 18. This letter outlined some concerns regarding the business practices of the school system's Payroll Division, headed by Ms. Crawford, about which Ms. Frazier had learned during the sexual harassment investigation.

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[1] Ms. Crawford was actually terminated on January 6, 2003, not in November 2002. App. 26. Also, Veronica Frazier interviewed Ms. Crawford at the Human Resources Department, not the Legal Department. App. 4-5.

Based on this letter and other complaints about the operation of the Payroll Division, an investigation of the Payroll Division was commenced which resulted in Ms. Crawford being placed on administrative leave on November 7, 2002, and being charged with numerous instances of misconduct. The charges are described in a December 4, 2002 letter to Ms. Crawford. App. 20. The problems included the mishandling of employee contributions to retirement plans and payments to insurance companies, mishandling of court garnishments, and failure to timely file federal tax returns for the school system. *Id.*

A hearing was conducted by Chris Henson, the Assistant Superintendent for Business and Facility Services, on December 12, 2004, at which Ms. Crawford appeared and was represented by counsel. App. 25. Ms. Crawford presented little defense or explanation to the charges. *Id.* As a result, Mr. Henson decided to terminate Ms. Crawford's employment on January 6, 2003. App. 26.

Ms. Crawford appealed Mr. Henson's decision to the Director of Schools, Dr. Pedro Garcia. Dr. Garcia held a hearing on February 6, 2003, at which Ms. Crawford appeared and was represented by counsel. App. 40. After hearing evidence put on by the school administration and by Ms. Crawford, on March 31, 2003 Dr. Garcia issued his 13-page decision finding Mr. Henson's termination of Ms. Crawford's employment to be justified. App. 40-41.

Nearly three months later, Ms. Crawford filed her EEOC Charge of Discrimination, on June 24, 2003. App. 42-43. In this document she claims she was retaliated against because she "participat[ed] in a sexual harassment

investigation" in June 2002.[2] *Id.* On September 10, 2003, the EEOC concluded its investigation and it issued a "Dismissal and Notice of Right to Sue" letter, indicating it was unable to conclude that any of Ms. Crawford's rights under Title VII had been violated. App. 44-46.

These facts provide the "big picture" of the events which led to the termination of Ms. Crawford's employment. It is easy to lose sight of the fact that she was terminated for multiple instances of serious neglect of duty, if the discussion focuses on the policy arguments and the salacious facts she presents in her Petition (this case never progressed to the point where the Metropolitan Government was required to controvert Ms. Crawford's attention-grabbing facts).

SUMMARY OF ARGUMENT

The leadoff section of Ms. Crawford's petition contains an "extrastatutory policy argument" urging the Court to give deference to the EEOC's interpretation of Title VII as contained in its Compliance Manual, in its pronouncements of Policy Guidance, and in two briefs the EEOC filed in a single Eleventh Circuit case which it lost.[3] *See*, *Ledbetter v. Goodyear Tire and Rubber, Co., Inc.*, 127 S.Ct. 2162, 2176 (2007) (rejecting "extrastatutory policy arguments" in a Title VII case). However, in

[2] Ms. Crawford was off by a month. At her deposition she agreed the date of her interview was July 22, 2002. App. 5-6.

[3] The case the EEOC lost which holds against Ms. Crawford but upon which she has relied both here and below is *EEOC v. Total System Services, Inc.*, 221 F.3d 1171 (11th Cir. 2000), *reh. en banc den.*, 240 F.3d 899 (2001)

numerous decisions this Court has declined to defer to the EEOC's interpretations of Title VII, noting that administrative agencies have no special claim to deference in their interpretation of statutes or this Court's decisions.

Alternatively, Ms. Crawford's suggestion that the Court defer to the EEOC's policy pronouncements and adjudicatory positions is a path fraught with peril for her. Assuming *arguendo* this Court were to defer to the EEOC, presumably such deference would also extend to agency decisions unfavorable to Ms. Crawford, like the EEOC's finding in this very case. After thoroughly investigating the very claims that are the subject of this case, the EEOC was unable to conclude that Ms. Crawford's Title VII rights had been violated. App. 44-46. Surely Ms. Crawford's "deference" argument applies equally to the EEOC's finding of no discrimination in this case. What is good for the goose is good for the gander.

Ms. Crawford next attempts to show a conflict between the circuits regarding the type of conduct required to constitute protected "opposition activity" under Title VII. However, she overstates the holdings of the cases she cites, in an attempt to manufacture a conflict between the circuits. The law cited by the District Court and the Sixth Circuit is clear: participation in an in-house sexual harassment investigation prior to the commencement of an EEOC proceeding is not a protected activity under Title VII's "participation clause." Further, Ms. Crawford's conduct in this case does not rise to the level of "opposition" activity under Title VII.

The third section of Ms. Crawford's petition repeats the policy arguments of the first section, in an overly dramatic prognostication of supposedly dire implications

of the Sixth Circuit's decision. The hyperbole riddling this section undercuts its impact. The doomsday scenario Ms. Crawford paints emanates from a worldview in which all employees are victims, and all employers are intent on retaliation. The Court should give short shrift to these arguments.

REASONS FOR DENYING REVIEW

I. THE COURT SHOULD DECLINE TO DEFER TO THE EEOC'S POLICY PRONOUNCMENTS AND ADJUDICATORY POSITIONS

In a recent Title VII case, the Court reiterated the point that it is not bound by an administrative agency's interpretations of federal law, nor is it bound by the agency's adjudicatory positions taken in prior litigation. *Ledbetter*, 127 S.Ct. at 2177, n.11; *See National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 111, n.6 (2002). Administrative agencies have no special claim to deference in their interpretations of Supreme Court decisions. *Ledbetter*, 127 S.Ct. at 2177, n.11; *Reno v. Bossier Parish School Bd.*, 528 U.S. 320, 336 n.5 (2000). In *Ledbetter*, the Court did not find any ambiguity in the statute itself. This is significant because Ms. Ledbetter argued that purported ambiguity in the statute is what called for deference to the EEOC's Compliance Manual in the first place. *Ledbetter*, 127 S.Ct. at 2177, n.11.

There is no ambiguity in this case either. This case involves the same statute at issue in *Ledbetter* (Title VII). The key language is found at 42 U.S.C. § 2000e-3(a) which provides, in pertinent part:

> It shall be an unlawful employment practice for an employer to discriminate against any of [its] employees . . . because [the employee] has **opposed** any practice made an unlawful employment practice by this subchapter, or because [the employee] has made a charge, testified, assisted or **participated** in any manner in an investigation, proceeding or hearing **under this subchapter**. (Emphasis added).

The circuits are unanimous that participation in an in-house sexual harassment investigation, not undertaken while any EEOC charge is pending, is not a "protected activity" under Title VII. *Abbott v. Crown Motor Co., Inc.*, 348 F.3d 537, 543 (6th Cir. 2003); *EEOC v. Total System Services, Inc.* 221 F.3d 1171, 1174 (11th Cir. 2000); *Brower v. Runyon*, 178 F.3d 1002, 1005-06 (8th Cir. 1999); *Vasconcelos v. Meese*, 907 F.2d 111, 113 (9th Cir. 1990). All circuit courts which have directly considered the issue have concluded that the protected activity of "participation in an investigation . . . under this subchapter" means just what it says – that the federal remedies afforded by Title VII only protect participation in an investigation if it was conducted pursuant to federal law (i.e. – pursuant to an investigation, proceeding or hearing prompted by a complainant invoking Title VII rights).

Since day one, when she filed her EEOC Charge of Discrimination, Ms. Crawford has contended that the alleged retaliation resulted from her **participation** in an in-house sexual harassment investigation, which had long since concluded by the time she filed her EEOC charge. App. 43. It was only after receiving the Metropolitan Government's summary judgment motion raising this issue that Ms. Crawford had the revelation that her

statements during her July 22, 2002 interview had magically become "opposition" activity under Title VII:

Ms. Crawford asks the Court to give "deference" to the EEOC's pronouncements in its Compliance Manual, its statements of Policy Guidance, and the positions it has advocated in appellate briefs. However, this "deference" is a two-edged sword for Ms. Crawford. Surely Ms. Crawford would agree that any such deference should be accorded equally across the entire spectrum of EEOC activity. Assuming *arguendo* the Court was to give deference to the EEOC's policy pronouncements, then the Court should also give deference to the EEOC's specific finding in this very case that, after a thorough investigation, it was unable to conclude that Ms. Crawford's Title VII rights had been violated. App. 45. In fact, one could argue that specific agency findings in a given case – made after a thorough agency investigation – should be accorded **more** deference than broad agency pronouncements of policy or agency interpretations of statutes.

If Ms. Crawford really wants deference, then that deference should apply to agency pronouncements both favorable and unfavorable to her.

II. THERE IS NO CONFLICT BETWEEN THE CIRCUITS

As set forth above, the circuits are unanimous in holding that participation in an in-house sexual harassment investigation, not undertaken while any EEOC charge is pending, is not a "protected activity" under Title VII. *Abbott*, 348 F.3d at 543; *Total System Services, Inc.*, 221 F.3d at 1174; *Brower*, 178 F.3d at 1005-06; *Vasconcelos*, 907 F.2d at 113.

Since the case law prevents her from proceeding under Title VII's "participation clause," Ms. Crawford argues her interview with the Human Resources investigators on July 22, 2002 was really "opposition" conduct. "Opposition" conduct includes making informal protests of discriminatory employment practices, including making complaints to management, writing critical letters to customers, protesting against discrimination by industry or society in general, and expressing support for co-workers who have filed formal charges. *Curay-Cramer v. Ursuline Academy of Wilmington, Delaware, Inc.*, 450 F.3d 130, 135 (3rd Cir. 2006).

Under the "opposition clause," by "opposing" or "protesting" an alleged discriminatory employment practice, and by claiming retaliation resulted from such opposition, Ms. Crawford may invoke the protections of Title VII. *Booker v. Brown and Williamson Tobacco Co., Inc.*, 879 F.2d 1304, 1313 (6th Cir. 1989). However, "opposition" activity, by definition, consists of taking the initiative to report what the complainant perceives as conduct violating Title VII. An aggrieved party has to consciously take the initiative to **do** something which can reasonably be interpreted as "opposing" an unlawful employment practice.

To "oppose" something is "to place over against something so as to provide resistance, counterbalance or contrast; to place opposite or against something; to offer resistance to." Merriam-Webster Online Dictionary (2006-07 Ed.). The common thread in these definitions is the person doing the "opposing" has to actually do something to indicate "resistance."

The appellate decisions bear this out. In *Valentin-Almeyda v. Municipality of Aguadilla*, 447 F.3d 85, 96-97 (1st Cir. 2006), plaintiff was found to have engaged in protected "opposition activity" by affirmatively complaining about sexual harassment to her direct superior and to the designated equal opportunity officer for a municipal police department. In *Moore v. City of Philadelphia,* 461 F.3d 331, 343 (3rd Cir. 2006), plaintiffs were found to have engaged in "opposition" conduct by making numerous complaints about racially derogatory remarks to the offending supervisor and officers up the chain of command. In *Worth v. Tyer*, 276 F.3d 249, 265 (7th Cir. 2001), the court found when plaintiff reported to the local police that defendant had touched her breast, she was engaging in protected "opposition" activity. Similarly, in *EEOC v. Dinuba Medical Clinic,* 222 F.3d 580, 586 (9th Cir. 2000), the court found that a sexual harassment victim's filing of a criminal complaint for assault and battery qualified as "opposition conduct" because the complainant reasonably believed she was subject to the battery because of her gender. In *Little v. Windermere Relocation, Inc.*, 301 F.3d 958, 969 (9th Cir. 2002) (*en banc*) the court found the complainant engaged in "opposition" activity when she reported to her company's EEO manager that she was raped by a potential client of the firm. Finally, in *Trent v. Valley Electric Assoc. Inc.*, 41 F.3d 524, 525 (9th Cir. 1994) the court found plaintiff had engaged in "opposition" conduct when she reported sexually offensive comments to her office manager, and 30 days later she reduced her complaint to writing.

All these cases have one thing in common: plaintiffs engaged in "opposition" conduct because they consciously took affirmative steps to report conduct they reasonably

thought was unlawful under Title VII. This type of conduct is in marked contrast to Ms. Crawford's single interview with investigators on July 22, 2002, which she has contended all along was the "protected activity" upon which her retaliation claim rests. Similar to the plaintiff in *Booker*, 879 F.2d at 1313, at her interview Ms. Crawford was not "opposing" an "unlawful employment practice." She was requested to come to Human Resources. She did not know the subject of the meeting in advance. App. 4-6.

In response to questioning, she told the investigators that a fellow employee (Gene Hughes) had behaved in a sexually inappropriate manner.[4] (See *Booker*, 879 F.2d at 1313, where the allegation was that an employee had a racial intolerance). When viewed objectively, in context, such statements made in a single interview in an investigation initiated by someone else are not protected by the opposition clause. It is the objective message conveyed – not the subjective intent of the person sending the message – which determines whether true "opposition" activity has taken place. *Curay-Cramer*, 145 F.3d at 137. In answering the investigators' questions, Ms. Crawford was not "opposing" an employment practice she considered unlawful.

On pages 16-19 of her Petition, Ms. Crawford contorts the holdings of a number of cases trying to shoehorn them to support her position. In citing to *Cardenas v. Massey*, 269 F.3d 251 (3rd Cir. 2001), Ms. Crawford makes certain

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[4] Gene Hughes was the Director of Employee Relations in the Human Resources Department of the school system. Ms. Crawford was the Payroll Supervisor in the Business and Facility Services Department of the school system. They had different supervisors and different chains of command.

assumptions based on the recitation of facts and she presumes an inference drawn therefrom is the "holding" of the case. Without going into detail regarding each of the three alleged protected activities, it is enough to say that from the descriptions provided in the opinion, whether or not they occurred pursuant to a proceeding under Title VII is unclear at best. *Id.* at 260. What is clear is that the defendant never raised the issue, and that nowhere in the opinion is there any discussion whether these three alleged protected activities occurred pursuant to a proceeding initiated under Title VII. The court merely assumed that they did. *Id.* at 263.

The case of *Evans v. City of Houston*, 246 F.3d 344 (5th Cir. 2001) is easily distinguishable. In *Evans*, the grievance hearing at which Ms. Evans testified concerned her co-employee's Title VII claims of racial discrimination. 246 F.3d at 352. From the recitation of the facts, it is unclear exactly when Ms. Evans' co-employee actually filed an EEOC charge, but the Court assumed the grievance hearing concerned Title VII claims. *Id.*

In citing to *Scott v. County of Ramsey*, 180 F.3d 913 (8th Cir. 1999), Ms. Crawford again makes certain assumptions based on the recitation of facts and she presumes an inference drawn therefrom is the "holding" of the case. Whether or not Mr. Scott's conduct constituted true "opposition" activity was never discussed. The county apparently assumed he engaged in a protected activity when he was ordered to participate in a sexual harassment investigation. *Id.* at 916. *Scott* involved a question as to the sufficiency of the evidence to support a jury verdict, and the propriety of a condonation jury instruction. 180 F.3d at 917-18. The court never discussed whether Mr.

Scott's participation in a sexual harassment investigation was a protected activity.[5]

On page 17 of her Petition Ms. Crawford cites to *Hoffman v. Rubin*, 193 F.3d 959, 963-64 (8th Cir. 1999), for the proposition that answering questions from internal affairs investigators concerning sexual harassment, and "responding to questions from the press," constitute protected activities. However, a close reading of *Hoffman* reveals the court never specifically held that Mr. Hoffman's statements to the investigators were protected activity. *Id.* at 963. On the other hand, the court had no trouble concluding that Mr. Hoffman's completely self-initiated appearance on the television show "60 Minutes" to discuss sexual harassment was indeed protected. *Id.* In this case, however, Ms. Crawford made no television appearances.

Paradoxically, Ms. Crawford cites to *Total System Services*, a case upon which the Sixth Circuit relied in ruling against her. Crawford App. 8a. This case stands for the proposition that if no formal charge of discrimination has been filed with the EEOC, an employee's participation in an in-house investigation is not a protected activity. 221 F.3d. at 1174, n.2. Ms. Crawford quotes from a subsequent opinion denying a petition for rehearing *en banc*, but the fact that only one judge (out of eleven) dissented from the denial of *en banc* review illustrates how uncontroversial

[5] In fact, the sexual harassment claim which sparked the internal investigation may have been filed pursuant to Title VII. The recitation of facts in the opinion is unclear on this point. 180 F.3d at 916. In any event, the issue was not raised by the defendant and was not discussed by the court.

the panel's holding is. *EEOC v. Total System Services, Inc.*, 240 F.3d 899, 904 (11th Cir. 2001).

Finally, Ms. Crawford cites to *McDonnell v. Cisneros*, 84 F.3d 256, 262 (7th Cir. 1996) as a case which "emphatically rejects" the Sixth Circuit's holding in this case. Once again, Ms. Crawford's argument falls victim to hyperbole. *McDonnell* was decided in 1996, ten years prior to the Sixth Circuit's decision in this case. It is difficult to argue that an antecedent case can "emphatically reject" the holding of a subsequent case. Petition, p. 19.

Ms. Crawford focuses on Judge Posner's use of the term "passive resistance" to describe conduct which fell under the "opposition" clause. However, the conduct of the supervisor at issue consisted of "failing to carry out his employer's desire that he prevent his subordinates from filing discrimination complaints." *Id.* at 262. With apologies to Judge Posner, there is nothing "passive" about this. This describes a conscious decision made by a supervisor to refuse to obey an order because he thought it unlawful under Title VII. Factually, there is no comparison to Ms. Crawford's situation.

Ms. Crawford seeks to expand the reach of the "opposition clause" to include conduct she characterizes as "passive opposition." This stands the concept on its head. No matter how one characterizes the term, true "opposition" conduct implies some type of affirmative action by the complainant. As the supervisor did in *McDonnell*, failing to carry out his employer's desire to prevent his subordinates from filing discrimination complaints reflects a conscious decision to embark on a course of action. Ms. Crawford never made a similar decision. She was summoned to a Human Resources interview in which she had

no idea the topic was going to be allegations of sexual harassment made by a co-worker.

Requiring a plaintiff ostensibly engaging in "opposition" conduct to actually, actively initiate a complaint mirrors the requirement that an employee take advantage of workplace procedures to actively report alleged discrimination, as set forth in *Faragher v. City of Boca Raton*, 524 U.S. 775, 806-07 (1998). In *Faragher*, this Court noted that the "primary objective" of Title VII is not to provide redress but to avoid harm in the first place. *Id.* at 806. To that end, Title VII encourages employers to establish a complaint procedure "designed to encourage victims of harassment to come forward . . . " to let their complaints be known. *Id.* The Court recognized that a perceived victim of discrimination has a duty "to use such means as are reasonable under the circumstances to avoid or minimize the damages" that result from violations of the statute. *Id.* (Internal citations omitted). The Court crafted the two-part affirmative defense now applicable in supervisory hostile environment cases based in part on the recognition of the employee's "corresponding obligation of reasonable care to avoid harm." *Id.* at 807.

Requiring the allegedly victimized employee to actually initiate a complaint in order to "oppose" an allegedly unlawful workplace practice conforms with the employee's "obligation of reasonable care to avoid harm" articulated in *Faragher*. In order to avail oneself of the opposition clause, an employee has to actually, actively "oppose" something.

In contrast, Ms. Crawford complained to no one, until she was summoned to an interview. She did not complain to her boss (Bob Bohnensteil) since she felt "at the time, I did not feel like [he] was very responsive to that nature."

App. 1-2. She also chose not to complain to Mr. Bohnensteil's boss (John Dietz) or the Assistant Superintendent for Human Resources, Graciella Escobedo (a woman). *Id.*

Ms. Crawford did not engage in "opposition conduct." She cannot avail herself of the opposition clause.

III. THE "FOREBODING SCENARIO" MS. CRAWFORD PREDICTS IS UNLIKELY TO OCCUR

The final section of Ms. Crawford's petition is another "extrastatutory policy argument." She draws from the opinion of Judge Barkett dissenting from the denial of rehearing in *Total System Services*, 240 F.3d at 899, *et seq.* Ms. Crawford argues that employers will be emboldened by the Sixth Circuit's ruling in this case. She contends employers will aggressively pursue retaliation of employees who participate in internal investigations, and then hide behind the shield of the *Faragher* "affirmative defense" of showing the employer exercised reasonable care to prevent and promptly correct any sexually harassing behavior, and that the employee failed to take advantage of any preventative or corrective opportunities provided. Crawford App. 8a-9a. However, the Sixth Circuit succinctly disposed of this argument. *Id.*

The response to this "foreboding scenario" (Crawford App. 9a) is that the availability of the *Faragher* affirmative defense is predicated on the reasonableness of the employer's efforts to prevent or correct harassment, and the unreasonableness of an employee's efforts to take advantage of such opportunities. Crawford App. 9a. As the court pointed out, a policy of firing witnesses who speak negatively during internal investigations would constitute bad faith, thus leaving the employer ineligible to assert

the *Faragher* affirmative defense. *Id.* at 9a-10a. This simple truth completely undercuts Ms. Crawford's argument.

Ms. Crawford further argues that as a result of the Sixth Circuit's decision, in the Sixth Circuit right now a "well defined window of opportunity" exists in which an employer "is free to retaliate against witnesses" in internal investigations – from the time a witness participates in such an investigation until the actual filing of an EEOC charge by that witness or someone else. Petition, p. 22-23. However, if employers were as bent on retaliation as they are in plaintiff's imaginary world, they have been able to "freely retaliate" for years under these circumstances not only in the Sixth Circuit (*Abbot v. Crown Motor Co., Inc.*, 348 F.3d 537, 543 (6th Cir. 2003)), but also in the Eighth (*Brower*, 178 F.3d at 1005-6), the Ninth (*Vasconcelos*, 907 F.2d at 113), and the Eleventh Circuits (*Total System Services*, 221 F.3d at 1174). Ms. Crawford's effort to ring the alarm bells on this issue falls flat, because the legal proposition which disposed of this case has been long accepted by every circuit that has squarely considered the issue.

Finally, Ms. Crawford complains that the EEOC might have to update the information on its website if the Sixth Circuit's decision is allowed to stand. Petition, p. 23. Ms. Crawford perversely argues that this Court should alter the state of the law because the state of the law calls into question certain information made publicly available by the EEOC.

The fact that the EEOC's website is visited ten million times a year is a wonderful thing. However, if the EEOC has posted content on its website which conceivably

conflicts with established law, perhaps the EEOC should consider changing the content of its website. Ms. Crawford's suggestion that the Sixth Circuit (and the Eighth, Ninth and Eleventh) have ruled in a manner conflicting with EEOC policy positions – and that the law should be changed to comport with content on the EEOC's website – is specious. She has it backwards. If anything, the EEOC should consider revising its website so it comports with the law.

CONCLUSION

For the foregoing reasons, Ms. Crawford's petition should be denied.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR TENNESSEE
FOR THE MIDDLE DISTRICT
NASHVILLE DIVISION

VICKY S. CRAWFORD, Plaintiff, VS. THE METROPOLITAN GOVERNMENT OF NASHVILLE and DAVIDSON COUNTY, TENNESSEE, DR. GENE HUGHES and DR. PEDRO GARCIA, Defendants.	CASE NO. 3:03-0996 JURY DEMAND

Deposition of:

VICKY S. CRAWFORD

July 1, 2004

* * *

[15] Q. All right. Well, you're a long-time employee of the school system. Right?

A. Yes.

Q. Your understanding was, the only place you could make a report of that conduct to would be to Gene Hughes?

A. To employee relations office, yes, sir.

Q. Why didn't you tell your boss?

A. At the time, I did not feel like my boss was very responsive to that nature.

Q. Who was your boss?

A. Mr. Bohnensteil, Bob Bohnensteil.

Q. Why didn't you tell his boss?

[16] A. I didn't think of it.

Q. Who would that have been?

A. Chris Henson.

Q. In May of 2002?

A. Mr. Dietz. I beg your pardon. John Dietz.

Q. John Dietz?

A. Yes, sir.

Q. Did it ever occur to you to tell the head of human resources?

A. No, sir.

Q. In May of 2002, that would have been Graciella Escobedo. Do you agree?

A. Yes, sir, May 2002.

Q. Did you ever tell your boss, Mr. Bohnensteil; his boss, Mr. Dietz; or the head of human resources any of the other incidences you have described between you and Mr. Hughes from August 2001 to May of 2002?

A. I told Mr. Bohnensteil about it in October of 2002.

Q. What did you tell him?

A. Mr. Bohnensteil had asked me to work with Mr. Hughes regarding the sick leave bank. I told him that I was not in a position to work with Mr. Hughes. He asked me why, and I told him that I had been instructed by Veronica Fraizer not to interact with Mr. Hughes and the [17] reason why I should not interact with Mr. Hughes. That's when I told Mr. Bohnensteil.

Q. What specifically were the reasons why you told Mr. Bohnensteil why Veronica Fraizer told you not to interact with Mr. Hughes?

A. He asked me why I wouldn't work with Mr. Hughes. That's the reason why I told him that I had been instructed not to, and he asked why and by who.

Q. All right. So when he asked you why had you been instructed not to deal with Mr. Hughes, what did you tell him?

A. That I had been advised by Metro human resources not to.

Q. Did you tell him the specific instances of which you spoke to us about 10 minutes ago?

A. Yes.

Q. In October of 2002?

A. Yes.

Q. But by that point, those allegations had already been investigated by Veronica Fraizer. Right?

A. Yes.

Q. So starting when Mr. Hughes became employed there in August of 2001 up through May of 2002, is it your

testimony that you never had a nonsexual conversation with Gene Hughes?

[18] A. Yes. we were able to converse.

Q. You had to deal with each other to talk about the sick leave bank. Right?

A. Right.

Q. What other work-related issues did you have to deal with Mr. Hughes about?

A. Nothing.

Q. So it was your – in terms of what you were required to do for your job, it was basically – in terms of what you were required to do for your job that brought you into contact with Gene Hughes, it was working on the sick bank?

A. Yes, sir.

Q. And in the course of this time frame from August 2001 to May 2002, you could have normal business conversations with Mr. Hughes?

A. Yes.

Q. So how did you come to talk to Veronica Fraizer?

A. They contacted me in the payroll department, Delaine.

Q. Delaine Linville?

A. Yes, sir. Called me in my – called and asked if I could come down there to their office.

Q. She works in the main metro human resources department. Right?

[19] A. Yes.

Q. And she contacted you in the summer of 2002?

A. Yes.

Q. What did she say?

A. She asked if I could come down there, and once I came down there, they told me that Dr. Hughes – Dr. Garcia had asked them to investigate some allegations in regards to Mr. Hughes. They asked me where my office was in relationship to Mr. Hughes' office, what type of work relationship that we had.

Q. Okay. Anything else?

A. And if there had been any inappropriate behavior by Mr. Hughes.

Q. Prior to the human resources investigators, Veronica Fraizer and Delaine Linville, prior to them contacting you and asking you to come to their office, you had never reported this conduct, which you're complaining about now, to anyone at the school system, had you?

A. That's correct.

Q. So do you recall the date you went to talk to Delaine Linville and Veronica Fraizer?

A. Not the actual date. It was in the month of July.

Q. Right. Have you ever seen their notes of your meeting?

[20] A. Yes. I've seen this before.

Q. Do you agree with me there's a date of July 22, 2002 up there?

A. Yes.

Q. Would you agree with me that that would be the date that you met with Veronica and Delaine?

A. Yes.

Q. I'm not going to ask you any more questions about that. I was trying to nail down the date.

So tell me what happened at this meeting. I mean, did you know what you were going to meet with them for before you went there?

A. No, sir.

Q. Did you know there was an investigation of Gene Hughes before you went there?

A. No, sir.

Q. Okay. So you went there not knowing what to expect, really?

A. That's correct.

Q. So tell me how they started the conversation.

A. They asked what my job was. They asked what – where my office was. They asked who I normally dealt with on a daily basis as far as the different departments and why I would have to work with that individual department. Then they asked me my – where my office was in [21] relationship to Mr. Hughes' office, what I had to do – how my office interacted with his office. And then they

asked if I had – if he had ever, as far as inappropriate behavior, conducted himself in an inappropriate way.

Q. All right. And then – you tell me if I'm putting words in your mouth, but then you told them the things that you told us about 15 minutes ago here in this deposition?

A. That's correct.

Q. The various instances of inappropriate conduct by Mr. Hughes?

A. That's correct.

* * *

App. 8

Fact Finding Report

Department: Board of Education
Fact finders: Veronica Frazier and Delaine Barwise
Date: September 13, 2002

Summary:

Jennifer Bozeman, an attorney with the Legal Department, contacted the Human Resources Department about a potential sexual harassment complaint in regard to Dr. Gene Hughes, Director of Employee Relations for the Metropolitan Nashville Public School System. As an attorney for the Board of Education, Ms. Bozeman felt an obligation to responsibly address these issues in order to ensure compliance with the established policies and procedures and to make sure that there were no unforeseen problems in the workplace.

As the Director of Employee Relations, Dr. Hughes is responsible for EEO investigations, including sexual harassment claims that are made by the Board of Education's employees. The scope and complexity of Dr. Hughes' position with the Metropolitan School District, in addition to obvious conflicts that may arise due to such serious allegations, clearly put Ms. Bozeman on notice to address these concerns with Dr. Pedro Garcia, Superintendent of Public Schools, and the Human Resources Department.

Witnesses:

Unless required for a direct quote, responses from interviews are summarized. Those interviewed are listed below in alphabetical order. All witnesses are employees with the Board of Education.

Jennifer Bozeman	Jackie Gauthier	Diane Proffitt
Diane Burden	Dr. Gene Hughes	Tamara Sadler
Vickie Crawford	Jayme Merritt	Dr. Julie Williams

Allegations

During routine conversation, Ms. Bozeman learned from Ms. Tamara Sadler, an Administrative Assistant with the Board of Education that there were several employees within the Administrative offices that had expressed concern about specific incidents of inappropriate behavior exhibited by Dr. Hughes.

Throughout the course of the investigation, Fact finders learned about other general allegations concerning the workplace environment at the Board of Education. Although these matters were brought to our attention, they are not in the realm of this EEO claim. However, due to the severity and seriousness of these claims, the Internal Audit Division of the Finance Department has been notified in order to ensure that these matters are investigated and resolved.

In the following report, Fact finders have attempted to address all allegations made by the complainants that would be covered under EEO guidelines.

A. Inappropriate Physical Contact

1. In May 2002, a witness alleged that she approached Dr. Hughes concerning business that he was conducting with the Payroll Department, and said, "Hi, Dr. Hughes. What's up?" The witness claims that Dr. Hughes entered her office and pulled the witnesses' head into his crotch. The witness stated that her head touched Dr. Hughes' pants and

groin area. The witness allegedly responded to Dr. Hughes by saying, "Get the hell out of my office."

Response

Dr. Hughes does not recall any specific incident where he would have pulled someone's head into his crotch. Dr. Hughes acknowledged that he frequently has questions about payroll issues in connection with sick pay, workers' compensation pay and leaves of absence. Dr. Hughes agreed that it would not be out of the ordinary for him to request information from the payroll department.

B. Inappropriate Behavior

1. Fact finders asked a witness to describe Dr. Hughes' demeanor. The witness responded, "Dr. Hughes struts around like a rooster in a hen yard. He pulls his shoulders back and acts like a bad ass, a super-duper football player." The witness alleges that when she would say, "Hi, Dr. Hughes. What's up," Dr. Hughes would grab his crotch and say, "I'll tell you what's up."

2. A witness alleged that Dr. Hughes walked up to the window facing into her office and said, "Hey Baby, come on, don't you want to get close to my body?" The witness stated that Dr. Hughes proceeded to rub his body against the window.

3. A witness alleged that while she was sitting at her desk in her office, Dr. Hughes came in and said, "Why don't you show me some titties?" The witness replied, "I'd better not,

Pedro would not like that." Dr. Hughes said, "You never know, he might."

4. In addition to these allegations, the witness told Fact finders that it was not unusual for her and Dr. Hughes to engage in conversation that included sexual references. The witness said that her normal response to these verbal exchanges would include, "Go to hell," or "Kiss my ass," and she would often motion to him by "flipping him a bird." The witness described their working relationship as "casual."

5. A witness stated that at first, Dr. Hughes made her feel uncomfortable. When questioned further about this statement, the witness said, "Just how he interacts." On one occasion, the witness alleged that Dr. Hughes questioned her and said, "What the fuck do you think you're doing?" The witness claimed that the most inappropriate behavior that Dr. Hughes displayed in the office was the hand gesturing and motioning in front of his crotch. The witness also stated that Dr. Hughes often used the phrase, "Bite me."

   This witness expressed a serious concern about retaliation from her participation in the investigation. The witness claimed, "If my name comes out of this, I won't have a part-time job."

   ***Fact finders note that this witness was terminated mid-investigation, shortly after the interview on June 24, 2002. Dr. Julie Williams, Assistant Superintendent of Human Resources, stated that**

she was responsible for the termination of this witness. Dr. Williams further indicated that Dr. Hughes had nothing to do with the decision to terminate this witness' part-time employment. Dr. Williams stated that she was not aware of the investigation, the claims that this witness made during the interview session, or this witness' apprehension in coming forward to discuss her work relationship with Dr. Hughes. Dr. Williams commented that no one at the Board of Education really knew that this witness was on the payroll. Dr. Garcia was not aware of her employment or her position. Dr. Williams said that after inquiring about her work and her responsibilities she learned that the witness was under Dr. Hughes' supervision. One of this witness' responsibilities during the year was the coordination of the Annual Teacher's Banquet. Dr. Williams stated that the witness was a retired principal and had continued to receive her pension in addition to receiving the same annual salary that she received as a principal. During the time that the witness was on the Board of Education's administrative payroll, she received an annual salary of $58,000 plus her retirement pension. At the end of the fiscal year, Dr. Williams determined that this witness' services were no longer needed, as her employment with the Board of Education was not under contract. Dr. Williams acknowledged that this witness' pay was at the top of the pay scale

for principals and the witness was not contributing to a student-based budget. Dr. Williams said, "For $58,000, we could hire two clerks for Dr. Hughes. Gene Hughes did not have anything to do with the termination – It was my decision and it was strictly budgetary."

6. A witness referenced her perception of Dr. Hughes' interaction with the Union and Mr. McMackin. The witness alleged that Dr. Hughes continuously made snide comments about the Union. In a discussion with Dr. Hughes, the witness claimed that Dr. Hughes said, "You would do better if you quit hanging with the enemy. I can see to it that you are never in administration. That's not a threat, that's a promise."

***Fact finders note that Dr. Williams said that she counseled Dr. Hughes on his performance and behavior when dealing with the Union. Dr. Williams said that she advised Dr. Hughes to change his demeanor when communicating with the Union officials. Dr. Williams said that the Union officials did not consider Dr. Hughes to be attentive and was often perceived to be aggressive and terse in his interaction with the Union.**

Response

Dr. Hughes denies all allegations of inappropriate conduct or conversations that would entail sexual references. In addition, Dr. Hughes rejects any claims that he touched himself or made comments or suggestions

about masturbation. Dr. Hughes disagrees with the allegation that that he used the word "fuck" and does not believe that he ever made an employee feel uneasy or uncomfortable.

Dr. Hughes concedes that he uses the phrase "bite me" at work and has possibly said, "Go to hell," in addition to engaging in hand gesturing when "shooting a bird."

Dr. Hughes admits to participating in inappropriate language with one particular witness. Dr. Hughes agreed with the term "banter" when describing these conversations; however Dr. Hughes refutes the claim that this communication contained sexual terminology or innuendo.

Dr. Hughes acknowledged that he sensed a great deal of animosity toward him upon his acceptance of his current position with the Board of Education. Dr. Hughes believed that the person that was in his position prior to his employment was responsible for the ill will and hostility that he has endured from the beginning of his service with Metro Schools. Dr. Hughes emphasized to Fact finders that upon the completion of this investigation, he assumed that more complaints would follow.

Issues and Conclusions

A. Inappropriate physical contact

Fact finders could not confirm allegations of inappropriate physical contact between one witness and Dr. Hughes at their workplace. Dr.

Hughes denies such behavior and there are no witnesses to corroborate the witness' claim.

B. Inappropriate behavior

1. Fact finders could not confirm the complainants statements; however, Fact finders note that more than one witness referenced their perception of Dr. Hughes' arrogance and penchant for grabbing his crotch.

2. Fact finders could not confirm the complainants allegations. Dr. Hughes denies such behavior and them are no witnesses to corroborate the witness' claim.

3. Fact finders could not confirm the witness' allegations. Dr. Hughes denies such behavior and there are no witnesses to corroborate the witness' claim.

4. Fact finders did find evidence of inappropriate behavior between this witness and Dr. Hughes; however, Fact finders could not confirm the witness' allegations where conversation included sexual references, since Dr. Hughes denied any use of sexual references or innuendo. Both parties admitted to Fact finders that their conversation and work relationship was routinely casual in nature. Dr. Hughes and this witness acknowledged use of inappropriate language during conversations at work. Dr. Hughes and this witness concede to using hand motions when "shooting a bird," in response to a comment.

5. Fact finders could not confirm the complainant's allegation that Dr. Hughes used the word "fuck." Dr. Hughes did admit during

Fact finders first interview that he used the phrase "bite me," but could not think of a time when the phrase might be appropriate or what context he would have used the phrase at work. At the completion of Fact finders second interview, Dr. Hughes admitted to using the phrase "bite me" at work.

6. Fact finders could not confirm complainant's statements. Dr. Hughes denies that he made such a reference to the witness' relationship with the Union. Dr. Hughes recognized that he does have a difficult relationship with the Union and that their communication is often strained and tense.

Fact Finders' Observations

- Fact finders agree that Ms. Bozeman was put on notice to report issues and concerns about an employee at the Board of Education, regarding behavior that might constitute Sexual Harassment as conveyed to her by another employee at the Board of Education. The complexity of Dr. Hughes' position, including his responsibility in reviewing and investigating sexual harassment complaints clearly compounded Ms. Bozeman's concerns.

- Fact finders concluded that Dr. Hughes did participate in inappropriate and unprofessional behavior. After completing the interviews, Fact finders noted that there were some employees who engaged in inappropriate language and behavior before Dr. Hughes was employed. It appears that management at the Board of Education has never addressed this inappropriate language and behavior in their workplace.

- The perception of management at the Board of Education, in addition to gossip and rumor-mongering,

has most certainly lead to a workplace that is plagued by low employee morale and raises concern about productivity. Management personnel at the Board of Education may want to renew their efforts to establish and maintain a productive workplace that is respectful of all employees. A work environment that is conducive to ethical standards and professionalism will in turn foster a high level of production, efficiency, and creativity and will improve workplace morale.

- Fact finders did note that two of the witnesses were especially fearful about the loss of their jobs. The witnesses' apprehension about participating in this investigation was greater than Fact finders would reasonably expect.

- Fact finders were made aware of allegations concerning drug purchasing and drug use between a witness and an employee in the mailroom.

- Fact finders recommend that the Board of Education complete an assessment of the Human Resource Division and provide training and education for staff with an emphasis on supervisory training. Metro Human Resources would be happy to assist the Board of Education with any training needs. Please call Flora Fann at 862-6640 for further training information.

BILL PURCELL
MAYOR

[LOGO]

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

September 13, 2002

Ms. Kim McDoniel
Internal Audit Manager
Finance Department
222 3rd Avenue North
Nashville, TN 37201

HUMAN RESOURCES
CIVIL SERVICE COMMISSION
EMPLOYEE BENEFIT BOARD
SUITE 200, 222 BUILDING
3RD AVENUE NORTH
NASHVILLE, TENNESSEE 37201

Dear Ms. McDoniel,

Upon the recent completion of an investigation at the Board of Education, our staff determined there to be several concerns in the Payroll Department. Due to the seriousness of these claims, the Human Resources Department finds it necessary to refer these issues to the Internal Audit Division to ensure that these claims can be appropriately addressed.

The following points highlight our concerns and issues in the Payroll Department:

- Negligence in sending payments to the appropriate creditors for collected Student Loan garnishments, which resulted in possible non-payment of the 2001 Tax Credit
- Child Support payments that were not credited to the appropriate agencies, which resulted in possible non-payment of the 2001 Tax Credit

- No audit trail for employee's Sick Bank
- Scheduled worktime not represented by actual time worked

We appreciate your attention to these matters. In order to assist in your review of this matter, we can provide names of witnesses who may be of help. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

/s/ Veronica T. Frazier
Veronica T. Frazier
Assistant Director of Human Resources

cc: David Manning
Ms. Jennifer Bozeman
Mr. John W. (Billy) Lynch

[LOGO] METROPOLITAN NASHVILLE PUBLIC SCHOOLS

Chris M. Henson
Assistant Superintendent
Business and Facility Services

2601 Bransford Ave. • Nashville, TN 37204 •
615/259-8515 • Fax: 615/259-8750

December 4, 2002

Ms. Vicky S. Crawford
723 Tobylynn Drive
Nashville, Tennessee 37211

RE: Disciplinary Action

Dear Ms. Crawford:

On November 7, 2002, you were placed on administrative leave so that an investigation could be conducted into potential problems within your office. Since that time, numerous operational irregularities have been discovered and brought to my attention. These matters raise serious concern about your performance in handling the duties and responsibilities of your position as Payroll Coordinator.

The investigation reveals the following:

1. Failure to resolve payments returned by vendors – uncashed checks found within your office include:

    a. Metropolitan Life Insurance Company – $54,203.34 – Dated Jan. 31, 2002
    b. State of Tennessee – $149.95 – Dated Jan. 11, 2002
    c. State of Tennessee – $78.75 – Dated Aug. 14, 2001
    d. Security Benefit Life Ins. Co. – $200.00 – Dated July 2, 2002

e. Educators Credit Union – $50.00 – Dated Nov. 27, 2001
f. Educators Credit Union – $50.00 – Dated Sept. 14, 2001

2. Failure to deposit checks received for pension contributions and overpayments – undeposited checks found within your office include:

a. Marie P. Ross – $585.95 – Dated June 29, 2001
b. Robert O. Lane – $132.47 – Dated Aug. 19, 2002
c. Henry J. Murrell – $1,694.86 – Dated Sept 7, 2001

3. Failure to properly remit and/or resolve employee annuity contributions – the following matters were found in your office:

a. Returned uncashed check made payable to Prudential Securities Inc. involving annuity accounts of 11 employees – $4,088.50 – Dated May 24, 2002
b. Returned uncashed check made payable to Investors Diversified Services involving annuity account of four employees – $557.50 – Dated July 5, 2002

4. Failure to properly remit court ordered payments to Davidson County General Sessions Court or return to employee – matters found in your office include the following:

a. Returned uncashed check originally remitted for payments on garnishments – returned due to failure to notify Court of defendants for which check was

submitted – $7,957.28 – Dated May 10, 2002

b. Returned uncashed check originally remitted for payment on a garnishment – returned due to satisfaction of account and should have been submitted to employee – $165.70 – Dated May 24, 2002

5. Failure to properly handle various issued/reissued checks – matters found in your office include the following:

a. Check to Juvenile Court of Davidson County – $2,633.44 – Dated March 28, 2002
b. Check to Provident Life for insurance premium – $5,203.60 – Dated March 28, 2002
c. Check to Ohio National Life Ins. Co. – $3,255.00 – Dated June 10, 2002
d. Check to Prudential Insurance Co. of America – $20.00 – Dated May 20, 2002
e. Check to UNUM Life Ins. Co. – $1976.20 – Dated July 18, 2002
f. Check to Monumental Life Insurance Co. – $24.88 – Dated. April 12, 2002
g. Payroll check to Tovar Israel – $156.17 – Dated Oct. 11, 2002
h. Payroll check to Amy L. Bogle – $487.71 – Dated Aug. 2, 2002
i. Garnishment refund check to James Green – $89.55 – Dated Aug. 22, 2002
j. Payroll replacement check to Joel Grimes – $397.55 – Dated June 14, 2002
k. Payroll checks to Donna Elaine Rice – $7997.99 – Dated Oct 12, 2001 – May 24, 2002

1. Payroll check to Edith A. Noland – $1,090.45 – Dated Dec. 18, 2001

6. Failure to properly handle voided checks

7. Failure to file Federal Tax returns timely and accurately potentially resulting in significant penalties

Based upon the above information, you are alleged to have violated the following rules found in Chapter VIII of the Handbook for Support Personnel:

1. Neglect of duty.
2. Failure to perform your duties.
3. Inefficiency in the performance of your duties.

As a result, I am contemplating taking disciplinary action against you. According to the Handbook for Support Personnel, the types of disciplinary action that can be considered include warning, reprimand, suspension, demotion, dismissal or other appropriate action.

In order to address the charges set out in this letter, and before any decision is made on disciplinary action, an administrative departmental hearing, conducted by me, is scheduled for Wednesday, December 11, 2002, at 10:30 a.m. in my office conference room (C-321). You have the right to have a representative with you at this hearing. The purpose of this hearing is to give you and/or your representative the opportunity to respond to the charges against you. The meeting is informal. You may present statements, witnesses, or any other information in regard to the charges.

If you desire, the hearing may be waived by signing the attached waiver of hearing statement. By waiving the

hearing, any decision on disciplinary action will be based upon the information that has been provided to me concerning these charges. If applicable, the waiver form should be submitted to me prior to the hearing date.

Sincerely,

/s/ Chris M. Henson
Chris M. Henson

CMH:bh

Attachment Waiver of Disciplinary Hearing

cc: Dr. Pedro Garcia
Dr. Julie Williams
Mr. Bob Bohnenstiel
Mr. Mike Safley

Waiver of Disciplinary Hearing

I, Vicky S. Crawford, as indicated by my signature below, hereby waive the disciplinary hearing that has been scheduled for me before Chris Henson concerning the charges in the attached letter. I understand that by waiving this hearing, any decision on disciplinary action will be based upon the information that has been provided to Mr. Henson concerning these charges.

Vicky Crawford

Date

[LOGO] METROPOLITAN NASHVILLE PUBLIC SCHOOLS

Chris M. Henson
Assistant Superintendent
Business and Facility Services

2601 Bransford Ave. • Nashville, TN 37204 •
615/259-8515 • Fax: 615/259-8750

January 6, 2003

Ms. Vicky S. Crawford
723 Tobylynn Drive
Nashville, Tennessee 37211

RE: Disciplinary Action

Dear Ms. Crawford:

Pursuant to my letter dated December 4, 2002, you were notified of the results of an investigation that had been conducted into potential problems within the Payroll office. The investigation revealed numerous operational irregularities. These irregularities were specifically identified in that correspondence.

As a result of the reported irregularities, my letter charged you with violation of the following rules found in Chapter VIII of the Handbook for Support Personnel:

1. Neglect of duty.
2. Failure to perform your duties.
3. Inefficiency in the performance of your duties.

I notified you that as a result of these charges, I was contemplating disciplinary action against you. Before taking such action, however, a disciplinary hearing was scheduled to give you and/or your representative the opportunity to respond to these charges. This hearing was conducted on December 12, 2002.

At the hearing, you were represented by Ann Steiner, Attorney-at-Law. Little defense or explanation was provided in response to the enumerated irregularities. Some testimony was presented that related to the charge concerning the handling of voided checks.

Based upon the results of the investigation, and after giving you an opportunity to respond to the charges, I have reached the conclusion that the irregularities, as set out in my December 4th letter, are true and are a direct result of your failure to properly perform your duties and responsibilities as Payroll Coordinator. Thus, I find you guilty of the above listed charges. Although this finding of guilt includes the allegation concerning the improper handling of voided checks, due to the explanation your witnesses provided at the hearing, I am disregarding this issue in determining the appropriate disciplinary action.

I realize that you have provided many years of service to the Metropolitan Nashville Public School System. Unfortunately, due to the serious nature of the violations that you have committed, I find that it is necessary to terminate your employment effective today, January 6, 2003.

As allowed by the rules in Chapter VIII of the Handbook for Support Personnel, you have the right to appeal my decision to the Director of Schools. According to the Handbook, a "request for an appeal hearing must be delivered to the Director of School's office within (5) working days. . ." of this notification. If you request such an appeal, you will be entitled to a representative of your own choosing.

Sincerely,

/s/ Chris M. Henson
Chris M. Henson

CMH:bh

Attachment Waiver of Disciplinary Hearing

cc: Dr. Pedro Garcia
Dr. Julie Williams
Mr. Bob Bohnenstiel
Mr. Mike Safley

IN RE:)
)
VICKY S. CRAWFORD)

DECISION OF THE DIRECTOR OF SCHOOLS

Dr. Pedro Garcia
Director of Schools
Metropolitan Davidson County
Public Schools
2601 Bransford Avenue
Nashville, TN 37204
(615) 259-8419

IN RE:)
)
VICKY S. CRAWFORD)

DECISION OF THE DIRECTOR OF SCHOOLS

FINDINGS OF FACT

This matter came to be heard on Thursday, February 6, 2003 before Dr. Pedro Garcia, Director of Schools, the Metropolitan Davidson County Public Schools. This matter is an appeal of the dismissal of a classified employee, Vicky S. Crawford.

Ms. Crawford was employed by the Metropolitan Public Schools on September 14, 1972. From 1977 until her placement on administrative leave in 2002, Ms. Crawford served in the payroll department, last serving in the position of payroll coordinator.

On December 4, 2002 Chris M. Henson, Assistant Superintendent gave Ms. Crawford a letter for Business

and Facility Services [sic]. The detailed seven allegations as follows:

1. failure to resolve payments returned by vendors;
2. failure to deposit checks received for pension contributions and overpayments;
3. failure to properly remit and/or resolve employee annuity contributions;
4. failure to properly remit court ordered payments to Davidson County General Sessions Court or return to employees;
5. failure to properly handle various issued/reissued checks;
6. failure to properly handle voided checks;
7. and failure to file federal tax returns timely and accurately potentially resulting in significant penalties.

According to Mr. Henson, these allegations support the charges of neglective [sic] duty, failure to perform duties, and inefficiency in the performance of duties.

Subsequent to the completion of the investigation in this matter, Mr. Henson issued a second letter to Ms. Crawford dated January 6, 2003 in which he opined that there was adequate evidence to support the charges of neglective [sic] duty, failure to perform duties, and inefficiency in the performance of duties. Mr. Henson further found that there was little defense or explanation provided to the enumerated irregularities discovered in Ms. Crawford's office. Upon review of all the facts and evidence, it was Mr. Henson's determination that Ms. Crawford should be terminated from her employment effective January 6, 2003. A copy of that letter is attached as Exhibit 2 to the

transcript of the proceedings in this matter. If is from the recommendation for termination that the appeal to this office is taken.

During the course of the hearing, sworn testimony was obtained from witnesses called by both the school system and the employee. The first such witness was Joseph C. Sullivan, a forensic auditor with KPMG. KPMG is the audit firm employed by the Metropolitan School System to perform its annual audits. As a forensic auditor, Mr. Sullivan performs investigative functions for the onsite auditors. Mr. Sullivan was summoned to the KPMG office in Nashville when an auditor stated that there were some concerns regarding potential irregularities and inefficiencies in the payroll department which were discovered during the routine audit process. A partner in the KPMG Nashville office contacted the Atlanta Forensic Audit Unit and asked that they examine what was identified as potential problems with the audit. Mr. Sullivan's unrebutted testimony is that he met with the auditors who were already onsite, spoke with them, and listened to their concerns. He then focused on a number of areas specifically relating to the operations of the payroll department.

During the course of his activities, Mr. Sullivan entered the office of Ms. Crawford in a search for documents. He found the office extremely unorganized. In his words, " . . . there were literally papers everywhere, on the floor, strewed [sic] about the desk, thrown in the bookcases in the office itself and there seemed to be no rhyme or reason. As I say, papers were just piled all over literally in a very unorganized fashion." Mr. Sullivan reviewed these documents and identified several as being problematic, *to wit*:

1. A check in the amount of fifty-four thousand two hundred and three dollars and thirty four cents ($54,203.34) made out to the Metropolitan Board of Education to the attention of Vicky Crawford that was received in the payroll office but never cashed. The date on the check was January 31, 2002. On April 19, 2002 and again on July 19, 2002 MetLife issued letters to Ms. Crawford stating that the check to the Metropolitan School System remained uncashed and an explanation was requested.

2. A check in the amount of one hundred and forty-nine dollars and ninety-five cents ($149.95) dated January 11, 2002 made payable to the Metropolitan Public Schools.

3. A check in the amount of seventy-eight dollars and seventy-five cents ($78.75) dated August 14, 2001 from the state of Tennessee payable to the Metropolitan Board of Education.

4. A check in the amount of two hundred dollars ($200.00) dated July 2, 2002 from the Security Benefit Life Insurance Company payable to the Metropolitan Public Schools.

5. A check in the amount of fifty dollars ($50.00) dated September 14, 2001 made payable to the Metropolitan Board of Education from the Educators Credit Union.

6. A check in the amount of five hundred and eighty-five dollars and ninety five cents ($85.95) [sic] dated July 29, 2001 made payable to the Metropolitan Board of Education by a Marie R. Heath for the estate of Marie P. Ross.

7. A check in the amount of one hundred and thirty-two dollars and forty-seven cents ($132.47) dated August 19, 2002 made payable to the Metropolitan Board of Education from Robert O. Lane.

8. A check in the, amount of one thousand six hundred and ninety-four dollars and eighty-six cents ($1,694.86) dated September 7, 2001 made payable to the Metropolitan Board of Education from the estate of Jamie Steel Mitchell.

9. A check in the amount of four thousand and eighty-eight dollars and fifty cents ($4,088.50) dated May 24, 2002 sent back to the Metropolitan Board of Education from Prudential Financial.

10. A check in the amount of five hundred and fifty-seven dollars and fifty cents ($557.50) dated July 5, 2002 returned to the Metropolitan Board of Education from Investors Diversified Services.

11. A check in the amount of seven thousand nine hundred and fifty-seven dollars and twenty-eight cents ($7,957.28) dated May 10, 2002 payable to the Davidson County General Session Court for payments on garnishments.

12. A check in the amount of one hundred and sixty-five dollars and seventy cents ($165.70) dated May 24, 2002 returned to the Metropolitan Board of Education on behalf of Todd Lawson.

13. A check in the amount of two thousand six hundred and thirty-three dollars and forty-four cents ($2,633.44) dated March 28, 2002 payable to the Juvenile Court of Davidson County.

14. A check in the amount of five thousand two hundred and three dollars and sixty cents ($5203.60) dated March 28, 2002 payable to the Provident Life Insurance Company.

15. A check in the amount of three thousand two hundred and fifty-five dollars ($3,255.00) dated June 10, 2002 made payable to the Ohio National Life Insurance Company.

16. A check in the amount of twenty dollars ($20.00) dated May 20, 2002 made payable to the Prudential Insurance Company of America.

17. A check in the amount of one thousand nine hundred and seventy-six dollars and twenty cents ($1,976.20) dated July 18, 2002 made payable to the UNUM Life Insurance Company.

18. A check in the amount of twenty-four dollars and eighty-eight cents ($24.88) dated April 12, 2002 made payable to the Monumental Life Insurance Company.

19. A payroll check in the amount of four hundred and fifty-six dollars and seventeen cents ($456.17) dated October 11, 2002 payable to Tovar Israel.

20. A payroll check in the amount of four hundred and eighty-seven dollars and seventy-one cents ($487.71) dated August 2, 2002 payable to Amy L. Bogle.

21. A check in the amount of eighty-nine dollars and fifty-five cents ($89.55) dated August 22, 2002 which is a garnishment refund check to James Green.

22. A check in the amount of three hundred and ninety-seven dollars and fifty-five cents ($397.55) dated June 14, 2002 that appears to be a payroll replacement check to Joel Grimes.

23. Several payroll checks totaling seven thousand nine hundred and ninety-seven dollars and ninety-nine cents ($7,997.99) dated from October 12, 2001 through May 24, 2002 constituting payroll checks to Donna Elaine Rice.

24. A check in the amount of one thousand and ninety dollars and forty-five cents ($1,090.45) dated December 18, 2001 appearing to be a payroll check to Edith A. Noland.

In addition to the above-items found in Ms. Crawford's office, Mr. Sullivan also testified finding correspondence from the Internal Revenue Service addressed directly to Ms. Crawford detailing inaccuracies in the filings to the Internal Revenue Service. According to Mr. Sullivan, the document details a total penalty due from the Metropolitan Board of Education that exceeds one million dollars ($1,000,000.00). These documents can be found in collective Exhibit 3 to the transcript of this proceeding.

The next witness called by the School District was Diane Burden, currently an employee in Human Resources but formerly an employee in the Payroll Department working under the supervision of Ms. Crawford. During the course of her testimony, Ms. Burden detailed

instances in which she was requested by the Director of Business Services to enter Ms. Crawford's office and retrieve vendor checks that had not been mailed and about which questions had been raised. Additionally, Ms. Burden testified that three employees, herself Tangiey Broughton, and Taronda Sanders, visited with Bob Bohnenstiel regarding complaints in the operation of the payroll office. Those complaints included employees calling saying that Ms. Crawford would not return their telephone calls as well as complaints from vendors stating that checks had not been received. Additionally, Ms. Burden testified to problems in the payroll office with student loan payments and child support checks not being remitted to proper vendors.

As a result of complaints to Mr. Bohnenstiel, a directive was issued that all checks would be copied with the copies being supplied to Mr. Bohnenstiel thereby assuring that the originals were mailed to proper vendors. Ms. Burden testified that since Ms. Crawford's removal from the payroll office, the copying of checks had ceased due to the fact that checks were being timely submitted to the vendors.

The next witness, Bob Bohnenstiel, Director of Business Services for the Metropolitan School System, testified that he was aware of concerns and/or problems that had been expressed by departmental employees regarding Ms. Crawford. Mr. Bohnenstiel testified that those problems included timeliness in sending out checks, including vendor checks for annuities or garnishments, and timeliness in refunding money to employees where money had been paid to an annuity but the membership in the annuity had been cancelled. Mr. Bohnenstiel said he discussed these problems with Ms. Crawford and that is [sic] was his

general impression that Ms. Crawford understood the problem. Mr. Bohnenstiel testified that they tried several methods to overcome their apparent inability to get checks to the appropriate vendor including, in some cases, his assuming the duties for mailing checks and for keeping a spreadsheet of each check mailed. Mr. Bohnenstiel also assigned other employees in the office the duty to mail the checks and he subsequently followed up with the school audit staff to make sure that the checks had cleared.

As to the problems with the Internal Revenue Service filings, Mr. Bohnenstiel testified that on several occasion [sic] the IRS notified the Metropolitan School System that the forms had not been received. He would instruct Ms. Crawford to complete an additional form for submission. Mr. Bohnenstiel further testified that copies of forms Ms. Crawford claimed had been filed were not often readily available. In fact, Mr. Bohnenstiel testified that it may be hours or days before a duplicate form was recreated and mailed.

The next witness, Chris Henson, Assistant Superintendent for Business and Facility Services for the Metropolitan Schools testified that phone calls to his office began a few days after be began work on July 1, 2002. Those complaints included calls from the IRS regarding the late filed form 941, employees calling regarding their annuity payments that had not been remitted to the appropriate vendor, and meetings with the three payroll clerks regarding problems with their immediate supervisor, Ms. Crawford. Mr. Henson testified that the employees wanted to make complaints regarding the way the payroll office had been run and was being operated and complaints regarding the length of time that it took to resolve the employee complaints. Mr. Henson testified that it was

he who preferred charges against Ms. Crawford after reviewing allegations pertaining to the operation of the payroll office, her supervision of the payroll department and the evidence located in her office during the audit investigation. Further, Mr. Henson testified that the information upon which he based the recommendation for termination came as a result of the findings in the KPMG audit that included conversations with the KPMG Forensics Unit, the KPMG Audit Team, Metro Internal Audit, and the Metro Legal Department. Mr. Henson further testified that he discussed the problems in a preliminary fashion with Mr. Bohnenstiel and was informed that methods and procedures were being implemented to reduce the number of complaints and inquiries from Employees as well as vendors. However, this was prior to the final audit report and the forensics investigation both conducted by KPMG.

Mr. Henson stated that Ms. Crawford was placed on administrative leave with pay pending the completion of the investigation and that on January 6, 2003, Ms. Crawford was notified of her termination. A departmental hearing was conducted on December 12, 2002 regarding the complaints in the audit findings. At the time of the departmental hearing, Ms. Crawford was still receiving her full pay. Mr. Henson testified that she was given the opportunity to explain anything she wanted in reference to the charges for her termination. Mr. Henson testified that Ms. Crawford did not directly address or respond to any matter in her departmental hearing.

Next to testify in this matter was Vicky S. Crawford, the employee about whom this hearing was initiated. Ms. Crawford testified that she began her employment with the Metro School System on September 14, 1972 and that

she moved to the payroll department in 1977 where, until her termination, she remained an employee. Ms. Crawford testified that prior to the summer of 2002 no one ever questioned her job performance with the Metropolitan School System. Ms. Crawford testified further that she has never been reprimanded in the course of her employment. Ms. Crawford began her testimony with accusations of sexual harassment against Dr. Gene Hughes, another employee of the Metro School System. It is evident from the opening argument of counsel in this matter that Ms. Crawford somehow links Dr. Gene Hughes to the employment action about which the hearing was requested. However, during the course of her testimony in both direct and cross-examination, Ms. Crawford failed to provide any definitive evidentiary link to Dr. Gene Hughes and this termination action other than the allegation of sexual harassment which is being litigated in another forum.

When asked specifically about some of the evidence found in her office, Ms. Crawford seemed to be confused as to how some of the evidence got into her office. Specifically, when asked about the fifty-four thousand dollar check from MetLife that was found in her office by Mr. Sullivan, Ms. Crawford replied that she did not know how the check got into her office. Ms. Crawford maintained that her office was open all the time and that she is often not the person in the office who opens the mail or distributes it. Ms. Crawford admitted that she did not know what the fifty-four thousand dollar check was for nor did she do any investigation during her employment relative to the receipt of the fifty-four thousand dollar check. Additionally, with regard to the checks from the State of Tennessee, Ms. Crawford stated that she had no idea the checks were in her office nor who put them there. The same response

was received when the question about the checks from the Educators Credit Union, the check from Ms. Ross, and the check from Mr. Lane. With regard to the checks from Prudential Securities and from Investors Diversified Services, Ms. Crawford alleged that the checks would have gone to the employee benefits department prior to receipt in her office and stated that no timeline existed for dispensing the checks once the information was received regarding the correct account in which the check should be deposited. Ms. Crawford did admit to having knowledge of very few of the checks, most notably the checks to Amy Bogle, Joel Grimes, James Green, and Donna Rice. Ms. Crawford claimed that once the checks were voided, it was a regular practice for the voided checks to be kept in a file cabinet or in her office. Ms. Crawford further testified that if a vendor check was voided then it was sent to the accounting office. Ms. Crawford claimed that nobody ever told her or reprimanded her for keeping voided checks in her office. Finally, Ms. Crawford reiterated that, in her opinion, her termination was retaliation for her claim of harassment against Dr. Gene Hughes.

Upon cross-examination Ms. Crawford admitted that she had been counseled by Mr. Bohnenstiel regarding timeliness in the performance of her duties. She further admitted that her office had been in vast disarray, however, on the day the auditors were present her office was, in her words, "immaculate." Ms. Crawford disagreed that there were various stacks of documents in her office and that certain documents in one stack may pertain to documents in another stack. She further stated that in reference to the fifty-four thousand dollar check, that any employee in the office would have handled the situation similar to the way she handled it. In fact, on further

examination, Ms. Crawford stated that she did not know anything about many of the articles that were found in her office and that someone else had "planted" them in her office.

CONCLUSION

After review of the testimony in this matter, it is the conclusion of this office that Vicky Crawford was justly terminated from employment with the Metropolitan School District. During the course of her testimony, Ms. Crawford exhibited an incredible lack of knowledge regarding the sensitive documents located in her office and offered very little explanation as to how the documents could have or should have been handled once they arrived either in her office or in the department she supervised. Ms. Crawford offered no proof to rebut the allegations contained in the charge letter except to say that she felt that her termination was a retaliation for allegations of sexual harassment that she had made against Dr. Gene Hughes, as well as stating that much of the evidence that was found in her office was "planted."

When asked on direct examination by her attorney why she had not followed proper procedure in reporting allegations of sexual harassment to her supervisor, Mrs. Crawford replied that she thought her supervisor, Mr. Bohnenstiel, was a "space cadet." I find that that this cavalier remark is representative of Mrs. [sic] Crawford's defense in this matter. The witnesses presented the evidence in a clear, cogent, and concise manner. The only defense offered to the charges and evidence presented is a complete denial of any knowledge or responsibility on the part of Mrs. [sic] Crawford for the irregularities. This is

further compounded by a glaring disrespect for those who were chosen to supervise and assist her with the difficulties that she experienced.

Based on the foregoing, it is the conclusion of this office that the termination of Vicky S. Crawford is justified and the recommendation of the Assistant Superintendent for Business and Facility Services regarding her termination is hereby AFFIRMED by the office of the Director of Schools.

ENTERED this 31 day of March, 2003.

/s/ Pedro Garcia
Dr. Pedro Garcia
Director of Schools

CHARGE OF DISCRIMINATION		
This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		
Charge Presented To: ☐ FEPA ☒ EEOC		Agency(ies) Charge No(s): **253-2003-01716**
Tennessee Human Rights Commission and EEOC *State or local Agency, if any*		
Name (Indicate Mr., Ms., Mrs.) **Ms. Vicky S. Crawford**	Home Phone No. *(Incl. Area Code)* **(615) 506-1827**	Date of Birth **11-28-1952**
Street Address 723 Tobylynn Drive	City, State and Zip Code Nashville, TN 37211	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (*If more than two, list under PARTICULARS below.*)		
Name METRO BOARD OF EDUCATION	No. Employees, Members 500 or More	Phone No. (*Include Area Code*) (615) 259-8400
Street Address 2601 Bransford Avenue	City, State and Zip Code Nashville, TN 37204	
Name	No. Employees, Members	Phone No. (*Include Area Code*)
Street Address	City, State and Zip Code	
DISCRIMINATION BASED ON (*Check appropriate box(es).*) ☐ Race ☐ Color ☐ Sex ☐ Religion ☐ National Origin ☒ Retaliation ☐ Age ☐ Disability ☐ Other (*specify below*)		

DATE(S) DISCRIMINATION TOOK PLACE

Earliest	Latest
11-07-2002	03-31-2003

☐ CONTINUING ACTION

THE PARTICULARS ARE (*if additional paper is needed, attach extra sheet(s)*):

I. I was hired by Metropolitan Board of Education on September 14, 1972. I was contacted by my employer in June, 2002 to participate in a sexual harassment investigation. For this, I was suspended and then discharged, as well as others who participated. They employ over 501+ employees.

II. My former employer will say I embezzled monies and suspected of drug use. These allegations are false.

III. I believe that I was suspended then discharged in retaliation for my participation in a sexual harassment investigation, in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

Jun 24, 2003 /s/ Vicky S. Crawford

Date *Charging Party Signature*

NOTARY – *When necessary for State and Local Agency Requirements*

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (*month, day, year*)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Vicky S. Crawford
723 Tobylynn Drive
Nashville, TN 37211

From: Nashville Area Office
50 Vantage Way
Suite 202
Nashville, TN 37228

[Filed Sep. 11, 2003]

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR § 1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
253-2003-01716	Sheila Ellis, Enforcement Sprv.	(615) 736-5820

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans with Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.

☐ Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.

☐ While reasonable efforts were made to locate you, we were not able to do so.

☐ You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.

☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐ Other (*briefly state*)

– NOTICE OF SUIT RIGHTS –

(*See the additional information attached to this form.*)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed *WITHIN 90 DAYS* of your receipt of this Notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations)

of the alleged EPA underpayment. This means that **backpay due for any violations that occurred *more than 2 years (3 years) before you file suit may not be collectible.***

On behalf of the Commission

/s/ [Illegible] for
Sarah L. Smith,
Area Director

Sep 10 2003
(*Date Mailed*)

Enclosures

cc: Pedro Garcia
Director of Schools
METRO BOARD OF EDUCATION
2601 Bransford Avenue
Nashville, TN 37204

Ann Simon
Metropolitan Attorney
204 Metropolitan Courthouse
Nashville, TN 37209